

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD HOPP,

8:08CV0185

Petitioner,

V.

MEMORANDUM AND ORDER

STATE OF NEBRASKA

ATTORNEY GENERAL'S OFFICE,

Respondent.

This matter is before the court on Petitioner’s Motion to Appoint Counsel. (Filing No. [15](#).) Alternatively, Petitioner requests an extension of time to respond to Respondents’ Motion to Dismiss. (Filing No. [13](#).) “There is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” [*McCall v. Benson*, 114 F.3d 754, 756 \(8th Cir. 1997\)](#). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner’s ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g.,* [*Morris v. Dormire*, 217 F.3d 556, 558-59 \(8th Cir. 2000\)](#), *cert. denied*, 531 U.S. 984 (2000); [*Hoggard v. Purkett*, 29 F.3d 469, 471 \(8th Cir. 1994\)](#) (citations omitted). *See also* Rule 8(c) of the [*Rules Governing Section 2254 Cases in the United States District Courts*](#) (requiring appointment of counsel if an evidentiary hearing is warranted.) The court finds that there is no need for the appointment of counsel at this time.

However, the court will give Petitioner until February 16, 2009 to respond to the pending Motion to Dismiss. In the event that Petitioner does not file a response by that date, the court will resolve the Motion to Dismiss without further notice. In the event that Petitioner files a response, Respondents shall have 30 days to file a reply.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion to Appoint Counsel (filing no. [15](#)) is denied.
2. Petitioner shall have until February 16, 2009 to respond to the pending Motion to Dismiss. In the event that Petitioner does not file a response by that date, the court will resolve the Motion to Dismiss without further notice. In the event that Petitioner files a response, Respondents shall have 30 days to file a reply.

January 15, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge